

Federal Communications
Commission

MAY 1 - 2019

Office of the Secretary

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re)	
)	
GLR Southern California, LLC)	
)	
Application for Extension of Special Temporary)	File No. 325-STA-20180710-00002
Authority For Delivery of Programming to)	
Mexican Station XEWW-AM,)	
Rosarita, Baja California Norte, Mexico)	
)	
)	

To: Office of the Secretary
Attn.: Chief, International Bureau

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OPPOSITION TO MOTION TO TERMINATE UNLAWFUL OPERATION

GLR Southern California, LLC ("GLR") and its parent company, H&H Group USA LLC ("H&H"), by their attorneys, hereby reply to the Motion to Terminate Unlawful Operation ("Motion") filed by Chinese Sound of Oriental and West Heritage ("Chinese Sound") on April 16, 2019.¹ The Motion is a repetitious filing by Chinese Sound made outside of the established pleading cycle regurgitating arguments that it has already made many times in this proceeding and asking for the same relief it has already requested in other pleadings. The Motion should be dismissed without consideration. Even if considered, it raises no substantive issues warranting the actions it requests.

In its Motion, Chinese Sound requests that the Commission order GLR to stop the transmission of its programming to Mexican radio station XEWW(AM), Rosarita, Baja

¹ See *Chinese Sound of Oriental and West Heritage Motion to Terminate Unlawful Operation*, File No. 325-STA-20180710-00002 (filed Apr. 16, 2019).

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California (“Station”). Chinese Sound has previously requested the exact same relief multiple times – yet it seems to be unable to resist filing yet another unauthorized pleading reiterating the same arguments.

In June 2018, GLR sought approval under Section 325(c) of the Communications Act, 47 U.S.C. § 325(c), for authorization to deliver, via internet protocol, Mandarin Chinese programming the Station, whose signal can be received in portions of Southern California.² Consistent with the Commission’s treatment of other § 325(c) applicants, the Commission granted GLR Special Temporary Authority (“STA”) to deliver cross-border transmissions of broadcast programs to the Station while the GLR Application was pending.³

In its untimely Supplement to Petition to Deny, filed against the GLR Application on September 4, 2018, Chinese Sound raised new issues and for the first time requested termination of the STA.⁴ Chinese Sound reiterated this request in its Reply to Opposition to Petition to Deny filed on September 11, 2018 and again in its unauthorized Reply to Response to Unauthorized Filings, filed on October 17, 2018.⁵ Chinese Sound made the same request to terminate the STA in its Opposition to Special Temporary Authority Extension filed on January 29, 2019 in connection with GLR’s application to renew the GLR STA.⁶ Chinese Sound raised the issue

² *Application for Permit to Deliver Programs to Foreign Broadcast Stations*, File No. 325-NEW-20180614-00001 (filed Jun. 13, 2018) (“GLR Application”).

³ The STA was granted in FCC File No. 325-STA-20180710-00002.

⁴ See *Chinese Sound of Oriental and West Heritage Petition to Deny* (FCC File No. 325-NEW-20180614-00001 (filed August 8, 2018); *Chinese Sound of Oriental and West Heritage Supplement to Petition to Deny*, FCC File No. 325-NEW-20180614-00001 (filed Sept. 4, 2018).

⁵ See *Chinese Sound of Oriental and West Heritage Reply to Opposition to Petition to Deny*, FCC File No. 325-NEW-20180614-00001 (filed Sept. 11, 2018); *Chinese Sound of Oriental and West Heritage Reply to Response to Unauthorized Filings*, FCC File No. 325-NEW-20180614-00001 (filed Oct. 17, 2018).

⁶ *Chinese Sound of Oriental and West Heritage Opposition to Special Temporary Authority Extension*, FCC File No. 325-STA-20180710-00002 (filed January 29, 2019).

again in its unauthorized Supplement to Opposition to Special Temporary Authority Extension filed on February 19, 2019.⁷

Despite having already filed *five* (5) separate pleadings to oppose the STA (many of which were filed outside of the Commission's approved pleading cycle), Chinese Sound's latest Motion makes the same arguments yet again, reiterating all of the arguments that GLR has already addressed at length in its responses to this litany of pleadings. How many times can one party be allowed to request the same relief without consequence? Suffice it to say, Chinese Sound's repetitious pleading must be dismissed, and Chinese Sound should be sanctioned for its repetitious and harassing pleadings.

Even if the Commission were to consider this latest Motion, Chinese Sound raises no issues of significance that would justify the action it seeks. Chinese Sound raises three issues in its Motion: (1) it argues that the initial STA, which GLR timely filed to extend, was improperly granted, (2) it asks the Commission to direct GLR to cease broadcasting programming on XEWW(AM) contending that even if the initial STA was valid when it was issued, it has since expired and while the renewal application is still pending before the Commission, GLR has no authority to deliver programs to XEWW(AM), and (3) it restates a litany of substantive arguments and false factual claims it has already raised in prior pleadings to support its arguments that the Commission should reject the underlying GLR Application. With regard to the first issue Chinese Sound raised in the Motion, GLR fully explained that the STA was properly granted in its Reply to Chinese Sound's Opposition to the Extension of the STA.⁸

⁷ *Chinese Sound of Oriental and West Heritage Supplement to Opposition to Special Temporary Authority Extension*, FCC File No. 325-STA-20180710-00002 (filed February 19, 2019).

⁸ See *GLR Southern California Reply to Special Temporary Authority Extension*, File No. 325-STA-20180710-00002 (filed Feb. 8, 2019) ("GLR Reply to STA Opposition").

Likewise, GLR has fully responded to all of the substantive arguments and false factual statements made by Chinese Sound in prior pleadings.⁹ Thus, the only “new” argument that Chinese Sound now raises is that the authority of GLR to deliver programming to XEWW(AM) has expired while the STA extension is pending. This argument is simply unsupported by the law.

Section 1.62(a)(1) of the Commission’s rules makes clear that an authorization granted by the Commission for any activity of a continuing nature remains in place while an application for a renewal of that authority is pending. Specifically, the rule states:

Where there is pending before the Commission at the time of expiration of license any proper and timely application for renewal of license with respect to any activity of a continuing nature, in accordance with the provisions of section 9(b) of the Administrative Procedure Act, such license shall continue in effect without further action by the Commission until such time as the Commission shall make a final determination with respect to the renewal application.

Section 1.62 essentially parrots the language of Section 9(b) of the Administrative Procedures Act (“APA”), which states:

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.¹⁰

The APA defines a “license” to include: “the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission[.]”¹¹

⁹ See, e.g., *GLR Southern California and H&H Group Opposition to Petition to Deny of*, File No. 325-NEW-20180614-00001 (filed Aug. 29, 2018); *GLR Southern California Response to Unauthorized Filings*, File No. 325-NEW-20180614-00001 (filed Sept. 24, 2018).

¹⁰ 5 USC § 558.

¹¹ 5 USC § 551(8).

A Commission STA clearly fits within this APA definition of a license. Moreover, Section 1.62's reference to the APA, makes it clear that the meaning of "license" for purposes of Section 1.62 is intended to be consistent with the definition of "license" in the APA and includes an STA. Thus, expiration of an STA constitutes the expiration of a "license" within the meaning of Section 1.62.

As a result, GLR has the authority to continue to operate the Station pursuant to the STA until the Commission either acts on the GLR Application or affirmatively takes action to revoke the STA. To do otherwise would make no sense, and would only encourage the kinds of frivolous pleadings which Chinese Sound continues to file. If Chinese Sound had its way, parties opposed to the continuation of a station's operation pursuant to some expiring Commission authorization could force that station off the air simply by filing frivolous pleadings to delay Commission action on a renewal of that authorization. This would frustrate settled business expectations, and encourage dilatory pleading tactics.

An example from outside the context of the Section 325 process makes clear the ludicrous nature of the Chinese Sound position. For example, take a station that receives an STA to operate at a reduced power. If that station subsequently needs to extend its STA because it has not yet resumed operations at its licensed power, under Chinese Sound's theory the station is not permitted to continue operations at reduced power while waiting on the Commission to act on its application to extend the STA. Under this scenario, the station would have to go silent rather than continue broadcasting at reduced power because to do otherwise would mean operating without a valid authorization. Upon going silent, the station would have to file an STA request seeking authority to be silent at the same time the Commission was considering its STA extension request to operate at reduced power.

If the Commission followed Chinese Sound's model, not only would the Commission have to immediately terminate currently effective STAs granted to other broadcasters and 325(c) applicants, it would waste the FCC's administrative resources and actively harm consumers who rely on broadcast programming by forcing stations to cease broadcasting while they wait for the Commission to approve an application that is merely preserving the *status quo*. This clearly is not the case in practice, and it is not authorized by the law, so Chinese Sound's argument must be rejected.

Chinese Sound also suggests that the Commission grant a stay to end the STA and require that GLR terminate its broadcasts immediately.¹² As demonstrated in the GLR Reply to STA Opposition, grant of the initial STA is final and non-reviewable.¹³ A stay request is not an appropriate tool at this stage to undo this action. "Stays are not intended to 'reverse, annul, undo or suspend what has already been done.'" ¹⁴ The Commission is clear that a stay request after the STA has become effective and after the time for administrative or judicial review has passed is "simply too late."¹⁵ Moreover, the purpose of a stay is to *preserve the status quo*. In this instance, eliminating the STA would actually change the *status quo*, and would deprive listeners of the GLR supplied programming that they have been enjoying for almost 9 months from XEWW(AM).

Even if the Commission were to analyze GLR's Motion under the criteria applied to a stay, Chinese Sound has not satisfied any of the four prongs of the test applied to evaluate a stay request. A petition for stay of a Commission action is analyzed under a four-part test which

¹² Motion at 3-4.

¹³ See GLR Reply to STA Opposition at 2-3.

¹⁴ *Smaller Market UHF Television Stations Group; Petition for Stay*, 81 FCC 2d 429, 435-36 (1980).

¹⁵ *Id.*

requires the stay proponent to demonstrate: (1) that it is likely to prevail on the merits; (2) that it will suffer irreparable harm if a stay is not granted; (3) that other interested parties will not be harmed if the stay is granted; and (4) that the public interest favors the grant of a stay.¹⁶

First, Chinese Sound is not likely to prevail on the merits. To support its proposition that it would prevail on the merits, Chinese Sound provides a laundry list of claims that GLR has already proven are meritless.¹⁷ Chinese Sound bases its arguments on wholly unsupported allegations of improper influence in a self-serving effort to protect itself from competition to the Southern California Chinese-speaking American audience.¹⁸ Chinese Sound fails to present any substantial or material question of fact or any legal or factual basis on which grant would be inconsistent with the public interest, convenience, and necessity. Meanwhile, all of the information provided by GLR demonstrates that the Applicant intends to comply with the Communications Act, any other relevant statutes, and the Commission's rules.

Second, Chinese Sound does not suffer any irreparable harm from the existence of the STA. Nor would it suffer irreparable harm if the Commission grants the GLR Application. Chinese Sound's sole argument to support its claim of irreparable harm is that XEWW(AM) "has the potential to draw listeners and potential donors away from listening to [its] station."¹⁹ However, the Commission has made clear that "economic loss does not, in and of itself, constitute irreparable harm." And "because competitive harm is merely a type of economic loss,

¹⁶ *KSWB, Inc.; Channel 51 of San Diego, Inc.; Petition for Stay*, 13 FCC Rcd 21867, 21868 (1998) ("Channel 51").

¹⁷ Motion at 4-5 (arguing for example that the programing provided by GLR is propaganda for the People's Republic of Chinese and that GLR will be an agent of the Chinese government). Chinese Sounds continues to engage in fearmongering utilizing these baseless claims to engage in anti-competitive behavior.

¹⁸ See Response to Unauthorized Filings of GLR Southern California, File No. 325-NEW-20180614-00001, at 6, 8 n.28, 12 (filed Sept. 24, 2018) ("Response").

¹⁹ Motion at 5.

'revenues and customers lost to competition which can be regained through competition are not irreparable.'"²⁰

Third, GLR would be substantially harmed by termination of the STA. Chinese Sound had every opportunity to raise the concerns it now raises when the Commission granted the initial STA more than nine months ago. Since that time, the GLR and its parent company have committed substantial resources to the Station and audiences have begun listening to XEWW(AM). Discontinuance of the STA before the Commission takes action on the GLR Application would upset the parties' settled expectations and undermine their investment in the Station.

Finally, grant of the stay would not be in the public interest. The public is best served by maintaining the *status quo* and extending the STA while the Commission evaluates GLR's Application. The valid STA serves the public interest by enabling the GLR to continue to deliver Chinese and Mandarin language programming to XEWW(AM), whose signals are consistently received in southern California. This, in turn, will allow more than 100,000 Chinese and Mandarin-speaking potential listeners in the Los Angeles metro listening area to continue to hear Chinese and Mandarin language programming at no cost. The continued existence of the STA preserves the current service received by these listeners while the GLR Application is being processed.

In short, the Motion represents yet another attempt to delay grant of the GLR Application for anticompetitive reasons. The initial STA became final long ago, and is no longer subject to review, reconsideration, appeal, or stay. The Applicants filed a timely renewal request for the initial STA as required by Commission rules. There are simply no grounds to deny GLR's

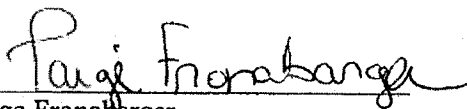
²⁰ Channel 51, 13 FCC Rcd at 21868.

Section 325 Application or its request to extend the STA. The untimely Motion must be rejected, and the STA extended.

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Dated: May 1, 2019

Respectfully submitted,
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CERTIFICATE OF SERVICE

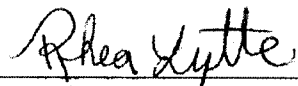
I, Rhea Lytle, a legal secretary with the law firm of Wilkinson Barker Knauer, LLP, hereby certify that on this 1st day of May, 2019, I served copies of the foregoing "OPPOSITION TO MOTION TO TERMINATE UNLAWFUL OPERATION" on the following:

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